IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.898 of 2007

Kalaivani .. Petitioner/Wife of the detenu

Vs

1. The Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. The Commissioner of Police
   Greater Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Parthiban
For Respondents: Mr.P.Kumaresan
Addl. Public Prosecutor

O R D E R
(Made by P.D.DINAKARAN,J.)

The petitioner, wife of detenu, Nagaraj, son of Munusamy, who was incarcerated by order dated 7.2.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in Memo No.41/BDFGISSV/2007, to set aside the same and to direct the respondents to produce the detenu, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

2. On the basis of a complaint lodged by one Kumar that on 14.12.2006, the detenu along with one Balaji, threatened him at the knife point and forcibly took Rs.460/- from his pocket by beating him on his chest and abdomen and also threatened the public who came for his rescue

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that they would be killed and hurled the bottles taken from the nearby shop in the road, which scattered all over the roadside and also made them to run on all sides seeking shelter resulting in traffic dislocation, the detenu was arrested and a case was registered in Crime No.1832/2006 on the file of K9, Thiru Vi.Ka.Nagar Police Station, for the offence punishable under Sections 341, 323, 392, 397 and 506(2), IPC.

3. The second respondent, taking note of the above case as a ground case and six adverse cases, ordered his detention dubbing him as a goonda.

4. The learned counsel for the petitioner challenging the impugned order of detention on the ground of non application of mind on the part of the detaining authority to the fact that the complainant even though had stated the names of the detenu and another in his complaint, had not chosen to state their names at the time of recording the Accident Register. which shows the non-application of mind by the detaining authority.

5. A perusal of the entire materials placed before us would reveal that in the FIR, which is found at page No.45 of the booklet, the complainant had mentioned the names of the accused as Balaji and Nagaraj. However, in the Accident Register at page No.61 of the booklet, it is mentioned as assault by two unknown persons. In our considered opinion, the said discrepancy, apparent on the face of the record, which would disclose the non application of mind by the detaining authority, vitiates the impugned order of detention. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

kpl

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To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

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2. The Commissioner of Police
   Greater Chennai.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Joint Secretary to Government
   Public (Law & Order) Department
   Fort st, George, Chennai.9.

5. The Public Prosecutor
   High Court, Madras.

NSM(CO)
RD 8.10.07

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